

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

**JEFFERY ENGLISH v. CHERRY LINDAMOOD, Warden
and STATE OF TENNESSEE**

**Appeal from the Circuit Court for Wayne County
No. 14114 Stella L. Hargrove, Judge**

No. M2007-00738-CCA-R3-HC - Filed September 13, 2007

The Petitioner, Jeffery English, appeals from the trial court's dismissal of his petition seeking habeas corpus relief. The State has filed a motion requesting that this Court affirm the trial court's dismissal of the petition pursuant to Rule 20, Rules of the Court of Criminal Appeals. The State's motion is granted. The judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed
Pursuant to Rule 20, Tenn. Ct. Crim. App. R.**

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Jeffery English, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

The record on appeal reflects that in 1999 the Petitioner pleaded guilty to and was convicted of three counts of aggravated robbery. Following a sentencing hearing, the Petitioner was sentenced to sixteen years for each count. In addition, his probation for a prior conviction was revoked and he was ordered to serve his eight-year sentence for the prior conviction in confinement. All sentences were ordered to be served consecutively for a total effective sentence of fifty-six years.¹

¹ See State v. Jeffery English, No. M1999-02495-CCA-R3-CD, 2000 WL 1731291, at *1 (Tenn. Crim. App., Nashville, Nov. 22, 2000); Jeffery M. English v. State, No. M2002-00175-CCA-R3-PC, 2003 WL 288435, at *1 (Tenn. Crim. App., Nashville, Feb. 11, 2003).

On December 30, 2006, the Petitioner filed a petition for habeas corpus relief. The petition asserts that the indictments charging him with the offenses of aggravated robbery were fatally defective and void. The petition therefore asserts that the trial court was without jurisdiction to convict him of the offenses of aggravated robbery.

In response to the petition, the State filed a motion to dismiss on the grounds that the petition did not satisfy the procedural requirements for a petition for habeas corpus relief and further that the grounds stated in the petition did not set forth a cognizable claim for habeas corpus relief. The trial court entered an order granting the motion to dismiss without stating the specific reasons for granting the petition. The Petitioner appealed from the order of dismissal. This matter is now before this Court upon the State's motion to affirm the judgment of the trial court in accordance with Rule 20 of the Rules of the Court of Criminal Appeals.

Article 1, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief and Tennessee Code Annotated sections 29-21-101 et seq. codify the applicable procedures for seeking a writ. However, the grounds upon which our law provides relief are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). Habeas corpus relief is available in Tennessee only when it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that (1) the convicting court was without jurisdiction or authority to sentence a defendant; or (2) the defendant's sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). Thus, the grounds upon which habeas corpus relief will be granted are very narrow. State v. Ritchie, 20 S.W.3d 624, 630 (Tenn. 2000). It is permissible for a trial court to summarily dismiss a petition for habeas corpus relief, without the appointment of counsel and without an evidentiary hearing, if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. Passarella v. State, 891 S.W.2d 619 (Tenn. Crim. App. 1994).

On appeal, the Defendant argues that his convictions are void because the indictments fail to allege "the essential element of violence." The Petitioner has attached to his petition what appears to be a copy of the indictment supporting each conviction for aggravated robbery. Each indictment names the Petitioner as a defendant, asserts the date of the offense and charges that the [Petitioner] "did unlawfully, feloniously, intentionally, knowingly and by putting the victim in fear, take from the person of [the victim] good and lawful [currency], by use of a deadly weapon, to wit: a pistol, in violation of Tennessee Code Annotated, section 39-13-402(a)(1)."

A valid indictment is essential to vest jurisdiction in the convicting court, and an indictment that is so defective that it fails to vest jurisdiction may be challenged in a habeas corpus proceeding. See Wyatt v. State, 24 S.W. 3d 319, 323 (Tenn. 2000). Our supreme court has held that an indictment meets constitutional requirements if it provides sufficient information (1) to enable the accused to know the accusation to which answer is required, (2) to furnish the court adequate basis for the entry of a proper judgment, and (3) to protect the accused from double jeopardy. State v. Hill, 954 S.W. 2d 725, 727 (Tenn. 1997). In addition, an indictment must state the facts of the offense in ordinary and concise language. See Tenn. Code Ann. § 40-13-202.

After reviewing each of the indictments attached to the petition, we conclude that the indictments meet both the constitutional and statutory requirements. We also conclude that the indictments upon which the Defendant's convictions are based, are sufficient to vest jurisdiction in the convicting court.

The Petitioner also argues on appeal that "the corrective process afforded to the Appellant during his habeas corpus, was so clearly deficient so as to render futile any effort to obtain relief." As we have stated, a trial court may summarily dismiss a petition for habeas corpus relief if there is nothing on the face of the judgment or the record to indicate that the convictions are void. Here, the trial court was able to review the copies of the indictment which the Petitioner had attached to his petition. Based on the trial court's conclusion that the indictments were valid, the trial court was justified in summarily dismissing the petition.

The Petitioner argues for the first time on appeal that his "sentences of sixteen years and eight years was imposed in direct contravention of a statutory provision of law." This ground which alleges an illegal sentence was not included in the petition filed in the trial court and may not be raised for the first time on appeal.

We conclude that the trial court did not err by summarily dismissing the Petitioner's habeas corpus proceeding. Accordingly, the State's motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

DAVID H. WELLES, JUDGE